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Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

GEORGE JALIL ABI SALEH,

Petitioner,

v.

JOHN ASHCROFT, U.S. ATTORNEY GENERAL,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the First Circuit erred in denying Petitioner's Petition for Review in that Petitioner provided credible testimony demonstrating that he suffered past persecution and has a well-founded fear of future persecution if returned to Lebanon. See, *INS v. Cardoza-Fonseca*, 480 U.S. 421, 450 (1987); *El Moraghy v. Ashcroft*, 331 F.3d 195 (1st Cir. 2003).

PARTIES TO PROCEEDING

George Jalil Abi Saleh, Petitioner

John Ashcroft, U.S. Attorney General, Respondent

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OPINION of the United States Court of Appeals for the First Circuit, Docket No. 04-1912, Entered November 30, 2004: Decision of Board of Immigration Appeals Summarily Affirmed.

ORDER of the Executive Office for Immigration Review, Board of Immigration Appeals, Agency No. A77 924 790, Entered June 16, 2004: Affirming without opinion the decision of the Immigration Judge.

DECISION of the Executive Office for Immigration Review, Office of the Immigration Judge, Agency No. A77 924 790, Entered June 20, 2003: Denying Petitioner's Applications for Asylum, Withholding of Removal, and Protection under the Convention Against Torture.

STATEMENT OF JURISDICTION

By judgment entered November 30, 2004, with Mandate issued on January 21, 2005, the United States Court of Appeals for the First Circuit summarily affirmed the decision of the Board of Immigration Appeals denying Petitioner's appeal of the decision of the Immigration Judge.

Petitioner thereafter timely filed this Petition for Writ of Certiorari. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

Petitioner timely filed an appeal of the Immigration Judge's decision with the Board of Immigration Appeals. A.R. 37. By order dated June 16, 2004, the Board of Immigration Appeals affirmed, without opinion, the IJ's decision. A.R. 2. Petitioner thereafter timely filed a Petition for Review in the First Circuit Court of Appeals. This petition for review was based on a final agency determination. 8 U.S.C. §3.1(a)(7). The First Circuit had jurisdiction based upon 8 U.S.C. §1252(a)(2)(B)(ii). By judgment entered on November 30, 2004, with the Mandate issued on January 21, 2005, the First Circuit summarily affirmed the decision of the BIA and denied and dismissed the Petition for Review. Petitioner now timely petitions this Court for review.

STATEMENT OF FACTS

Petitioner is a native and citizen of Lebanon. He is also a member of the Christian religion. A.R. 108. Prior to coming to the United States, Petitioner was living in Amioun, Lebanon and was employed as a bartender/waiter. A.R. 306.

On March 18, 2000, Petitioner was traveling home from work in his vehicle. A.R. 109. As he was traveling in the town of Batroun, he encountered a roadblock of Syrian Secret Service members. A.R. 109, 110, 122. At the roadblock, he was ordered to get out of his car and told to wait on the side of the road. A.R. 109. His car was searched. A.R. 110. Fliers with the words "Lebanon is for Lebanese" were found in the car. A.R. 110. The fliers were a way of

expressing a demand for the withdrawal of Syrian forces from Lebanon. A.R. 123.

Petitioner had obtained the fliers from his place of employment, had distributed some of them already, and intended to bring the remaining fliers in his car to family and friends in his village. A.R. 111. The fliers were an expression of Lebanese freedom. *Id.*

After the Secret Service found the fliers in Petitioner's car, they beat him, blindfolded him, took him into custody and brought him to their headquarters in Tripoli. A.R. 111. At the headquarters, he was beaten again and attached to an electrical machine. *Id.* He was released the following day, Sunday, March 19th, after he agreed to cooperate with the Syrian Secret Service. A.R. 111, 112, 127, 128. After his release, Petitioner sought medical treatment for injuries he sustained from the beatings. A.R. 117.

In order to secure his release, Petitioner had agreed to work with the Syrians in finding the people who made the fliers. A.R. 113. Petitioner said that on the following Sunday, the fourth Sunday of the month, he would bring the Syrians with him the next time he went to pick up some fliers in Beirut. A.R. 114, 116, 128. He promised to join them and was going to be given an identification card from the Syrian Secret Service. A.R. 128. Petitioner did not fulfill his agreement with the Syrians and never got the identification card. A.R. 116, 129.

On March 27, 2000, he fled Lebanon in fear of his life for failing to assist the Syrians. A.R. 117, 118, 120. He had a Lebanese passport and a Peruvian visa. A.R. 118.

After Petitioner arrived in the United States, he was informed by his parents in Lebanon that members of the

Syrian Secret Service had come to his home looking for him. His parents also told him that they were beaten and had their home and property damaged because they would not reveal Petitioner's location. A.R. 118.

From Lebanon, Petitioner traveled first to Italy. A.R. 120. Although he tried to request asylum in Italy, he had trouble communicating and was unable to make the request. A.R. 120, 121. From Italy, Petitioner came directly to the United States. A.R. 194.

Petitioner arrived in the United States on March 27, 2000. He was placed in removal proceedings where he applied for relief in the forms of asylum, withholding of removal, and protection under the Convention Against Torture before the Immigration Court in Boston, Massachusetts.

On March 18, 2003, the Immigration Judge found Petitioner not credible and denied all requested relief. The Immigration Judge's decision is devoid of legal analysis, contains a negative credibility finding that is contrary to the evidence, lacks a finding as to past persecution, disregards evidence of known country conditions, and imposes an improper evidentiary standard on Petitioner's supporting evidence.

ARGUMENT

When considered together, Petitioner's testimony and evidence clearly establish his eligibility for asylum, withholding of removal, and protection under the Convention Against Torture.

A. Legal Standards.

Under the Immigration and Nationality Act (INA), as amended by the Refugee Act of 1980, asylum may be granted to a refugee. A refugee is defined as any person "who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." INA §101(a)(42)(A); 8 C.F.R. §208.13 (1998); 8 U.S.C. §1101(a)(42)(A); §1158. Withholding is an absolute prohibition, forbidding the return of a person to a country where his or her "life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group or political opinion." INA §243(h); 8 U.S.C. §1253(h) [emphasis added].

To establish eligibility for political asylum, an applicant must show that the persecution he or she suffered or which he or she fears was inflicted "on account of" one of the protected grounds under the Act. INA §101(a)(42)(A).

The Board of Immigration Appeals has interpreted the phrase particular social group "as consisting of a group of persons all of whom share a common immutable characteristic." *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985); *Matter of Vigil,* Int. Dec. #3050 (BIA 1988). The Board in *Acosta* articulated a two-criteria test of eligibility for the social group category: the common characteristic defining the group must be one that the members of the group cannot change, or it must be one that the members of the group should not be required to change because it is so fundamental to the members' individual identity or conscience. *Id.*

In *Matter of O-Z- & I-Z-* (BIA Int. Dec. No. 3346, April 2, 1998), the Board declared that, in the aggregate, threats, beatings and humiliation on account of one's religious beliefs amount to persecution. The Board states that these acts of persecution rise above the level of mere discrimination, and an applicant demonstrating that he suffered from such acts of persecution does indeed establish that he suffered past persecution.

The test for whether an alien's fear of persecution is well-founded is whether a reasonable person in his situation would fear returning to the country: an alien "shall be found to have a well-founded fear of persecution if he or she can establish . . . , that there is a reasonable possibility of actually suffering such persecution if he or she were to return." 8 C.F.R. §208.13(b)(2); *Guevara-Flores v. INS*, 786 F.2d 1242, 1249 (5th Cir. 1986).

The Board of Immigration Appeals has adopted the "reasonableness" standard of *Guevara-Flores* and outlined the following four-point inquiry to determine if a claim is reasonable:

> Does the alien possess a belief or characteristic a persecutor seeks to overcome in other means of punishment of some sort?
>
> Is the persecutor already aware, or could the persecutor become aware, that the alien possesses this belief or characteristic?
>
> Is the persecutor capable of punishing the alien?
>
> Is the persecutor inclined to punish the alien?

Matter of Mogharrabi, 19 I&N Dec. 439, 446 (BIA 1987).

The United States Supreme Court has held that an alien can have a well-founded fear of persecution when

there is no more than a ten (10) percent probability that the persecution will occur. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 94 L.Ed. 434 (1987). Federal courts and Board members have reiterated and emphasized this numeric approximation by the Supreme Court of what degree of probability is necessary for an asylum claim to be well founded. See, e.g., *Mikhael v. INS*, 115 F.3d 299, 305 n.6 (5th Cir. 1997); *Fisher v. INS*, 79 F.3d 955, 969 (9th Cir. 1996) (Noonan dissent); *Singh v. Ilchert* (63 F.3d 1501, 1506) (9th Cir. 1995); *Gebremichael v. INS*, 10 F.3d 28, 34 n.18 (1st Cir. 1993); *Montecino v. INS*, 915 F.2d 518, 520 (9th Cir. 1990); *M.A. v. INS*, 858 F.2d 210, 214 (4th Cir. 1988); *Perez-Alvarez v. INS*, 857 F.2d 23, 25 (1st Cir. 1988); *Arteaga v. INS*, 836 F.2d 1227, 1229 (9th Cir. 1988); *Blanco-Comarribas v. INS*, 830 F.2d 1039, 1042 (9th Cir. 1987); *Matter of J-J*, Int. Dec. 3323, at 22 (BIA 1997) (Schmidt dissent); *Matter of E-P-*, Int. Dec. 3311, at 6 (BIA 1997) (Schmidt dissent); *Matter of V-T-S-*, Int. Dec. 3308, at 12 (B1A 1997) (dissenting opinion by Schmidt, J. and joined by Guendeisberger, J.).

An application for asylum shall be deemed also to constitute an application for withholding of removal. 8 C.F.R. §208.3(b). If the adjudicator determines that an alien is not eligible to apply for asylum, the alien's asylum application is then construed as an application for withholding of removal. *Id.*

Under §241(b)(A) of the Act, an alien qualifies for withholding of removal to his native country if he demonstrates that his "life or freedom would be threatened" on

account of his race, religion, nationality, membership in a particular social group or political opinion. Establishing withholding of removal carries a heavier burden of proof than that of establishing refugee status for a grant of asylum. The alien must show that it is more likely than not that his life or freedom would be threatened. 8 C.F.R. §208.16(b). See also, *INS v. Stevic*, 467 U.S. 407 (1984); *Cardoza-Fonseca, supra*. Withholding of removal is mandatory once the applicant meets the burden of proof: "an applicant's eligibility for withholding is established." 8 C.F.R. §208.16(c)(1).

B. Petitioner was credible.

Petitioner was credible insofar as his account of country conditions in Lebanon was consistent with the massive volume of supporting documentation detailing the persecution in Lebanon. However, even in the "absence of documentary proof, the applicant's testimony will be enough if it is credible, persuasive, and refers to specific facts that give rise to an inference that the applicant has been or has good reason to fear that he or she will be singled out for persecution." *Melendez v. U.S. Dep't of Justice*, 926 F.2d 211, 215 (2nd Cir. 1991).

In this case, the IJ based his negative credibility finding on two minor matters. However, one of these minor matters was reasonably explained by the Petitioner and the other was more than outweighed by the evidence of record.

In Petitioner's direct testimony, he stated that he had gotten the fliers found in his car from his place of employment. A.R. 111. At the time, Petitioner was employed as a bartender at the Regency Palace in Adma, Lebanon. A.R.

306. However, to secure his release from custody, Petitioner promised his captors that he would help them identify "the people that were making the fliers." A.R. 113. Thus, he testified further that he "told them that [I] pick[ed] up the fliers from Beirut, Acharafieh and [I went] on the last Sunday of the month to church to go praying with the fiancé this is where [I would] go and get the fliers, and [I] told them that [I] would go and bring them with [me]" to point out the people from whom he got the fliers. A.R. 114.

When asked on cross-examination to explain the confusion as to where he got the fliers, Petitioner clearly and reasonably explained that, although he in fact obtained the fliers through his employment, Petitioner had told the Syrian officers that he got them through his church in order to divert them: "I in effect got the fliers from the place of employment, but I had told them that I got the fliers from over there which is Beirut I think." A.R. 125. "I got [the fliers] from my place of employment, but I lied to [the Syrians] and told them that every last Sunday I [would] take [the Syrians] to where [he] got [the fliers] from in Beirut and we will pick them up together." *Id.* "I told them that to lie to them and get away from them and to free myself." *Id.* "I got the fliers from work, but I am telling you the story as it happened between me and them." A.R. 126.

The second reason the IJ gave for the negative credibility finding is based on the Record of Sworn Statement taken from Petitioner upon his arrival in the United States concerning any prior arrests. A.R. 158, 180-184. At the time of his arrival at Miami International Airport, an Immigration Officer questioned Petitioner. A.R. 180-184. He was asked whether he had "ever been arrested before

at any time or any place." *Id.* Although Petitioner answered in the negative, he clearly informed the officer that he fled Lebanon because of his fear of the Syrian Intelligence. *Id.* In his credible fear interview, and in all written and oral statements since then, Petitioner has reported his arrest on March 18, 2000 by Syrian Intelligence. Moreover, it would appear that this insignificant discrepancy did not trouble the government in that neither the asylum officer who conducted the Credible Fear Interview nor the government attorney choose to inquire about this matter.

Yet, despite the fact that the Petitioner's repeated account of events in Lebanon has been overwhelmingly consistent and detailed, from his Record of Sworn Statement to his Credible Fear Interview to his asylum application and testimony, the IJ unfairly focused on one extremely minor discrepancy.

The Record of Sworn Statement clearly evidences that Petitioner fled Lebanon because of problems with and his fear of the Syrians in Lebanon.

> *What is your purpose in attempting to enter the United States today*?
> The reason I am coming here is the Syrian[s] in Lebanon are causing us a lot[ ] of problems.
>
> *Why did you leave your home country or country of last residence*?
> I left my country because of the Syrian[s], I am coming to seek political asylum.
>
> *Do you have any fear or concern about being returned to your home country or being removed from the United States*?
> Yes.

Would you be harmed if you are returned to your home country or country of last residence?
Yes.

A.R. 180-184.

Thus, the two bases for the IJ's negative credibility finding were reasonably explained by the Petitioner and outweighed by the majority of the evidence. Accordingly, the IJ's negative credibility finding is contrary to the overwhelming evidence and cannot stand.

Moreover, country reports support the fact that politically active persons are wrongfully detained, tortured, and imprisoned in Lebanon for their activities. Petitioner's testimony is consistent with country reports describing the activities of the Syrians and the nonfeasance of the police and Lebanese government. Such reports state: "Non-Lebanese military and paramilitary forces retain significant influence over much of [Lebanon] . . . and undermined the authority of the central Government . . . " A.R. 204. Further, in the past "security forces used excessive force to break up a demonstration calling for the withdrawal of Syrian forces from the country." A.R. 226.

Finally, Petitioner respectfully argues that, in light of these known country conditions, any alleged minor inconsistencies in his testimony should be resolved in his favor and receive little, if any, weight. *Garrovillas v. INS*, 156 F.3d 1010, 10 13-14 (9th Cir. 1998); *Vilorio-Lopez v. INS*, 825 F.2d 1137, 1142 (9th Cir. 1988); *Damaize-Job v. INS*, 787 F.2d 1332, 1337 (9th Cir. 1986).

C. The IJ failed to make a finding as to whether Petitioner established past persecution.

In his decision, the IJ failed to make a finding as to whether Petitioner suffered past persecution. The absence of reasoned discussion of past persecution undercuts any meaningful review of the IJ's fear of future persecution finding because it is unclear whether Petitioner should have been given the benefit of the regulatory presumption of a well-founded fear of future persecution based on past events. See, *El Moraghy v. Ashcroft*, 331 F.3d 195 (1st Cir. 2003). Moreover, the IJ's failure to make a finding as to past persecution ignores the wealth of supporting evidence contained in the record.

In his decision the IJ gives only scant acknowledgment to the supporting background evidence submitted in this case and fails to provide any analysis as to how the background evidence impacted the decision. Indeed, when referring to each of the three Country Reports for Human Rights Practices and articles submitted in this case, the IJ stated that "[a] review of that document does not refer to the Petitioner nor any members of his family," yet failed to explain how/why that fact should impact Petitioner's application in that Petitioner never asserted that he was named in these documents! In 2003, the First Circuit addressed this particular IJ's inappropriate use of background evidence in *El Moraghy v. Ashcroft*, *supra*, when it stated: "It is unrealistic to expect that country condition reports could contain references to all citizens of that country who have faced, or might face, persecution on one of the specified grounds. While country reports may, in rare instances involving prominent dissidents, contain direct corroboration of [an applicant's] account, to demand that they do so and otherwise eschew any analysis of the

evidence is clearly erroneous."[1] Thus, because of the IJ's misuse of the background materials and his complete failure to reasonably acknowledge these materials in his decision the decision cannot stand.

The physical and psychological harm Petitioner endured clearly qualifies him for asylum based on past persecution. While there is no universal definition of "persecution" set forth in either the INA or the regulations, the Board of Immigration Appeals has defined persecution as a "threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive." *Matter of Acosta*, 19 I&N Dec. 21 at 222.

In this case, Petitioner's life and freedom were threatened on account of political differences between Petitioner and his persecutors. The threats to Petitioner's life and freedom came from the Syrian forces operating in Lebanon with consent of the Lebanese government. Petitioner's fear was not "speculative," but based upon the clear pattern of persecution that the Syrians commit in Lebanon.

The definition of persecution also includes physical, psychological and verbal abuse of such degree, intensity,

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[1] In the *El Moraghy* case, the same IJ denied asylum, withholding of removal, and protection under the Convention Against Torture to an Egyptian Coptic Christian. In vacating the BIA's affirmance without opinion and remanding the case, the First Circuit said: "Basic flaws in the methodology and reasoning used by the [IJ] undercut his reasoning and so we remand. We reject the notion that a State Department country condition report must specifically name a [Petitioner] or his family members to be useful in the analysis of an asylum application. We also reject the notion that an IJ, . . . , may simply ignore the need to make a finding as to whether [Petitioner] has demonstrated past persecution on account of one of the specified grounds for asylum."

duration and frequency that it constitutes extreme conduct. *Matter of D-V-*, Int. Dec. 3252 (BIA 1993). Again, it is essential to note the role and power of the Syrians in Lebanon acknowledged in the documentary evidence submitted by Petitioner. The degree and intensity of harm was extreme in that Petitioner's attackers control the government and are renowned for their violent fanaticism, and have a powerful role in the community. Such psychological harm amounts to persecution.

D. Petitioner has demonstrated a well-founded fear of future persecution.

Even if Petitioner was found not to have established past persecution, he may still be granted political asylum if he establishes a well-founded fear of future persecution. Asylum petitioners who have not suffered past persecution have been able to establish a well-founded fear of future persecution if they offer evidence that they would be individually targeted, because of their particular status or role in their home country, for persecution on one of the statutorily defined grounds. See, *Mogpian v. INS*, 184 F.3d 1029 (9th Cir. 1999) (member of prominent Armenian Kurdish-Muslim family had well-founded fear based on persecution of family members and escalation of anti-Muslim sentiment in post-Soviet Armenia).

In this case, Petitioner testified consistently and in a detailed manner about his anti-Syrian activities, his arrest, detention, and beating, and the threats he received at the hands of Syrian Intelligence operating in Lebanon. Because the documentary evidence shows that Syrian forces continue to have unrestricted and widespread

influence in Lebanon, Petitioner has demonstrated a well-founded fear of persecution were he to return to Lebanon.

Moreover, although ignored by the IJ, the country condition reports contained in the record are replete with references to the on going presence of Syrian Intelligence in Lebanon and the influence the Syrians have on the Lebanese government. A.R. 204, 223, 237-304. Indeed, page one of the most recent country report states that:

> Lebanon is a parliamentary republic. . . . President Emile Lahoud took office in 1998 after an election by Parliament that was **heavily influenced by Syria**. . . . **Non-Lebanese military and paramilitary forces retained significant influence over much of the country**. . . . The right of citizens to change their government remained significantly restricted by **the lack of complete government control over parts of the country**, shortcomings in the electoral system, the flawed 2000 elections, and **Syrian influence**. (Emphasis added.)

A.R. 204.[2]

Furthermore, the *Country Report* for Lebanon does not mention an area in which there is *not* persecution. A.R. 147. Conversely, it states that the Syrian government controls Lebanon: "Lebanon government has been unable to control the activities of these Syrian forces and even claimed to know of 'no human rights violations.'" Here, Petitioner is unable to relocate within Lebanon because

[2] It must be noted that the government has not argued, and the IJ made no finding, as to any change in the country conditions in Lebanon and the Syrian presence there.

the activities of the Syrians are widespread throughout all of Lebanon, and the police will offer them no assistance. Petitioner will not be safe in any part of Lebanon.

Petitioner's fear of future persecution is genuine and objectively reasonable. A reasonable person in this situation would certainly fear persecution upon return to Lebanon. If Petitioner was to return to Lebanon, he would continue to face severe persecution, especially since he would be viewed as "westernized." Furthermore, there is no evidence that anything has changed in Lebanon with regard to Petitioner's particular situation. He has every reason to fear repetition of the same treatment, possibly with greater success, if he is forced to return to Lebanon. Unlike Petitioners in *Matter of Chen*, 195 F.3d 198 (4th Cir. 1999), Petitioner in this case has actually proven that he has suffered several past incidents of attacks and threats based on his political beliefs. Petitioner in this present case established that his past and future fear of persecution is grounded on several laws as outlined in the *Country Reports* several instances of repeated abuse, and attacks, not a string of random events.

This idea is further emphasized by several present-day instances of persecution in Lebanon and, more importantly, the lack of governmental control against it.

E. Petitioner is eligible for Withholding of Removal.

The evidence submitted by Petitioner is also sufficient to meet the higher "clear probability of persecution" standard required to establish eligibility for a mandatory grant of withholding of deportation under §243(h) of the INA. See, *INS v. Stevic*, 467 U.S. 407, 104 S. Ct. 2489;

INS v. Cardoza-Fonseca, 480 U.S. 421 (1987). Petitioner has made a showing that it is more likely than not that he will be persecuted upon return to Lebanon. Petitioner has credibly testified that there is a clear probability of future persecution due to the blatant threats made to Petitioner. The Syrian Secret Service would undoubtedly target Petitioner if he returned to Lebanon after spending a few years in the United States, trying to escape their persecutory treatment.

CONCLUSION

Based on the foregoing, Petitioner respectfully asks that this Petition for a Writ of Certiorari be granted and that he be given the relief requested. Petitioner has testified credibly, consistently, and in a detailed manner about the abuse and harmful treatment he suffered by the Syrian Intelligence because of his opposition to their presence in Lebanon. Moreover, the Syrian Intelligence remains influential throughout Lebanon thereby preventing Petitioner from finding safety anywhere in the country. Petitioner offered overwhelming evidence in his case that clearly supports his testimony and his request for relief. Based upon this evidence, the First Circuit erred in summarily affirming the BIA decision and such error cannot stand.

Respectfully submitted,

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United States Court of Appeals
For the First Circuit

No. 04-1912

GEORGE JALIL ABI SALEH,

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

PETITION FOR REVIEW OF AN ORDER OF THE BOARD OF IMMIGRATION APPEALS

Before
Lynch, Lipez and Howard,
Circuit Judges.

Saher J. Macarius on brief for petitioner.

William C. Peachey, Office of Immigration Litigation, Civil Division, Department of Justice, on Respondent's Opposition to Petitioner's Motion for Stay of Removal.

November 30, 2004

Per Curiam. This case currently is before this court on the motion of petitioner George Jalil Abi Saleh for a

stay of removal. However, after reviewing the arguments contained in petitioner's brief, we conclude that, based on the record as a whole, substantial evidence supports the denial of petitioner's applications for asylum, withholding of deportation, and protection under the Convention Against Torture (CAT). Petitioner, who is a citizen of Lebanon, based these applications on allegations that he had been detained and physically abused by Syrian Intelligence forces operating in Lebanon.

In denying petitioner's applications, the Immigration Judge (IJ) determined, among other things, that petitioner's allegations concerning his detention were not credible and that, as a result, petitioner had failed to establish a well-founded fear of persecution. The IJ did not make a specific finding regarding whether petitioner had demonstrated past persecution. The Board of Immigration Appeals (BIA) affirmed the IJ's decision without opinion.

"We will uphold decisions of the IJ and BIA if supported by reasonable, substantial, and probative evidence on the record considered as a whole." *Settenda v. Ashcroft*, 377 F.3d 89, 93 (1st Cir. 2004) (internal quotation marks and citation omitted). In other words, a reversal is appropriate "only if the petitioner's evidence would compel a reasonable factfinder to conclude that relief was warranted." *Id.* (citation omitted). Where, as here, "the BIA does not render its own opinion . . . and either defers to or adopts the opinion of the IJ, a Court of Appeals must then review the decision of the IJ." *Id.* (internal punctuation and citation omitted).

Petitioner argues essentially that the IJ erred (1) by not addressing the question of past persecution and (2) by making a negative credibility determination that had no

support in the record. In regard to the latter issue, petitioner contends that the IJ erroneously relied on two minor inconsistencies – which petitioner had explained and which were negligible in light of the entire record. Petitioner also asserts that the IJ misused the country reports.

As for past persecution, we have held that "the absence of reasoned discussion of past persecution undercuts any meaningful review of the IJ's fear of future persecution finding, because we do not know whether [the petitioner] should have had the benefit of the regulatory presumption of fear of persecution based on prior events." *El Moraghy v. Ashcroft*, 331 F.3d 195, 204-05 (1st Cir. 2003). In *El Moraghy*, we remanded the matter to the BIA, in part because the IJ had not made any findings regarding past persecution. *Id.* In so ruling, we held that "an IJ, *particularly in the absence of any adverse finding as to petitioner's credibility*, may [not] simply ignore the need to make a finding as to whether petitioner has demonstrated past persecution on account of one of the specified grounds for asylum." *Id.* at 198 (emphasis added).

There is a crucial difference, though, between *El Moraghy* and the case at hand. In *El Moraghy*, the IJ not only had failed to make a finding regarding past persecution, but he also had failed to make *any determination whatsoever* regarding petitioner's credibility concerning the alleged incidents of past persecution. *Id.* at 199, 205. In contrast, the IJ here *did* make a credibility finding regarding petitioner's allegations of such persecution. In particular, the IJ stated that petitioner's testimony "is not credible concerning why he left Lebanon and why he is afraid to go back to there, specifically his being beaten and

given electric shocks by [the] Syrian Secret Service." Oral Decision of IJ, at 19.

This brings us to petitioner's second argument – that the IJ's credibility determination is not supported by substantial evidence. In this regard, "[w]e will not supplant the agency's findings merely by identifying alternative findings that could be supported by substantial evidence." *Cordero-Trejo v. INS*, 40 F.3d 482, 487 (1st Cir. 1994) (internal quotation marks and citation omitted). "However, though we defer to reasonable inferences drawn by the [IJ] from conflicting evidence, deference is not due where findings and conclusions are based on inferences or presumptions that are not reasonably grounded in the record, viewed as a whole, or are merely personal views of the [IJ]." *Id.* (citations omitted).

The IJ relied on the inconsistent nature of the record evidence to support his negative credibility finding. As examples of these inconsistencies, the IJ cited petitioner's contradictory statements concerning (1) the source of the fliers and (2) whether he ever had been arrested. The IJ also cited the letter from petitioner's physician relating to petitioner's alleged injuries and stated that this letter was suspect.

As for the source of the fliers, petitioner, as he points out, supplied an explanation for the discrepancies in his testimony. That is, petitioner stated that he had obtained the fliers at work and had lied to the Syrians, telling them that he had gotten the fliers somewhere else, in order to be released from custody. We think that, although the IJ could have accepted this explanation, his decision not to is supported by substantial evidence, given the other inconsistencies in the record.

One of these other inconsistencies is, as the IJ noted, the contradictory statements petitioner made concerning whether he had ever been arrested. Although petitioner argues that this inconsistency is minor, he offers no explanation for it. The third questionable piece of evidence cited by the IJ, which petitioner does *not* address, is the letter from petitioner's physician.

In this regard, the IJ correctly noted that the letter failed to state how petitioner had gotten the contusions on his back, face, and legs and failed to mention any injuries occurring as a result of the electric shock to which petitioner had testified. Further, it appears that the letter was not placed in the administrative record until the March 2003 hearing – almost *three years* after the filing, in September 2000, of petitioner's application for asylum. Petitioner does not give any reasons for the delay.

The IJ's opinion alludes to additional inconsistencies in the record. First, petitioner contradicted himself as to whether the Syrians had given him an ID card when they released him or whether he was to obtain such a card in the future. Petitioner stated the former in his credible fear interview, and he stated the latter at the hearing.

Second, petitioner averred, in his asylum application, that he had told the Syrians that he would take them to the church to identify the source of the fliers when petitioner went there on the *first* Sunday of the month. In contrast, petitioner testified, at the hearing, that he had promised to take the Syrians to the church on the *last* Sunday in the month. We note that this conflict is troubling given (1) that petitioner's own lawyer had prepared the asylum application and had read it to petitioner in Arabic and (2) that petitioner had signed the application,

thereby attesting to the truth of what was contained therein.

Third, petitioner testified at the hearing inconsistently about whether he had left home for Beirut on Wednesday by himself or with his father. At first, petitioner testified to the former, but, when questioned by the IJ, he changed his story to the latter. Further, petitioner was quite clear, initially, that his father had not obtained a visa for petitioner in Beirut, but rather had secured it somewhere else. When shown the visa itself, however, petitioner then claimed that he had never looked at it.

This leaves petitioner's claim that the IJ misused the Country Reports when the IJ noted that neither petitioner nor his family were mentioned in these documents. *See El Moraghy*, 331 F.3d at 198 (rejecting "the notion that a State Department country condition report must specifically name a petitioner or his family members to be useful in the analysis of an asylum application"). However, this plainly was not the only factor relied upon by the IJ to support his conclusion that petitioner had failed to establish past persecution. Rather, and as discussed above, the IJ's primary reason for this conclusion was his negative credibility finding concerning petitioner's claim that he had been detained and tortured by the Syrians.

Based on the foregoing, we think that the IJ's decision regarding the lack of past persecution is reasonably grounded in the record, and, thus, is supported by substantial evidence. *See Settenda*, 377 F.3d at 93 (a reversal is appropriate "only if the petitioner's evidence would *compel* a reasonable factfinder to conclude that relief was warranted") (emphasis added; citation omitted). This conclusion dooms petitioner's claim that he also has shown

a well-founded fear of persecution. Specifically, petitioner bases his fear of returning to Lebanon on his allegations of past persecution, and, since the IJ supportably found these allegations to be not credible, it would be difficult for petitioner to prove that his fear is "genuine." *See El Moraghy*, 331 F.3d at 203 (one of the requirements for showing a well-founded fear of future persecution). Finally, we do not address the IJ's denial of petitioner's application for protection under CAT, as petitioner does not raise the denial in his brief.

Summarily affirmed. See Local Rule 27(c). Petitioner's motion for a stay is *denied* as moot.

U.S. Department of Justice
Executive Office for
Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A77-924-790-BOSTON Date: JUN 16 2004

In re: SALEH, GEORGE JALIL ABI

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF
RESPONDENT: Macarius, Saher Joseph, Esq.

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 1003.1(e)(4).

/s/ [Illegible]
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Boston, Massachusetts

File No.: A 77 924 790 March 28, 2003

In the Matter of	)	
GEORGE JALIL ABI SALEH	)	IN REMOVAL
	)	PROCEEDINGS
Respondent	)	

CHARGE: Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act, as amended – immigrant not in possession of an immigrant visa and not exempt therefrom.

APPLICATIONS: Political asylum; withholding of removal; and the Convention against Torture.

ON BEHALF OF RESPONDENT:

Sahar J. Nacarias, Esquire
209 West Central Street
Suite 127
Nadic, Massachusetts 07160

ON BEHALF OF SERVICE:

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is 27-year-old, single, male, alien, a native of Lebanon and a citizen of Lebanon, who arrived at the Miami International Airport at Miami, Florida on March 27, 2000. The respondent was placed under removal proceedings on April 14, 2000. The record in these proceedings establishes that the respondent has conceded that the allegations 1 through 4 in his Notice to Appear

(Exhibit No. 1) are true as stated and that he is subject to removal upon the charge contained therein.

Allegations 1 through 4 in the Notice to Appear (Exhibit No. 1) indicates that the respondent is not a citizen or a national of the United States, but a native and citizen of Lebanon who is an immigrant not in possession of a valid immigrant visa and not exempt therefrom.

The charge of removability has been conceded by the respondent as an immigrant who is not in possession of an immigrant visa and not exempt therefrom pursuant to Section 212(a)(7)(A)(i)(I). Based on the foregoing and what is contained in the record, I find that the allegations in the Notice to Appear (Exhibit No. 1) are true as stated, and, based thereon, I find that the respondent is subject to removal on the charge contained therein by evidence which is clear and convincing.

The respondent applied for discretionary relief in the form of political asylum, withholding of removal, and the Convention against Torture. Exhibit No. 2 in the record contains the respondent's application for political asylum and withholding of removal in addition to the Convention against Torture which application was submitted to the Immigration Court and received September 14, 2000. A review of the application for asylum of the respondent along with withholding of removal and the Convention against Torture reflects the following.

The respondent was born on 7/1/1975; that he is single; that he is a native and a citizen of Lebanon; that he last left his country on March 27, 2000 and arrived in the United States on 4/17/2000, and that he was paroled into the United States at Miami, Florida. The asylum application of the respondent indicates that he has not been to

the United States previously and the asylum application indicates that the respondent's prior address in the country of residence from which he fears persecution was El-Bayader Amioun, Lebanon. The asylum application of the respondent reflects that the respondent's schooling was from October of 1979 to June of 1995. The asylum application indicates that the respondent resided in El-Bayader, Amioun, Elkhoura, Lebanon from July of 1975 to April of 2000. The asylum application of the respondent reflects that he was self-employed in furniture sales from November 1996 to January 1989 and worked as a bartender/captain/waiter for the Regency Palace in Adma, Lebanon from January 1999 to March of 2000. The asylum application states the names of the respondent's parents, both natives and citizens of Lebanon, who reside in Amioun, Lebanon.

Part C, Question No. 1, of the respondent's asylum application asks the question why are you seeking asylum with the following typed therein: "I will be sent to Mazzeh Prison by the Syrian Intelligence for my refusal to cooperate with them and direct them to the source of the fliers that I was distributing calling for the withdrawal of Syrian forces from Lebanon. I was warned that if I do not cooperate with them I will be deemed the source and would accordingly be sent to Mazzeh."

Part C, Question No. 2, of the respondent's asylum application asks the question have you or any member of your family ever belonged to or been associated with any organizations or groups in your home country, et cetera, yes is checked off with the following typed in: "11/95 to 11/96 – mandatory service of one year in the Lebanese army. My duties were administrative, operating a telephone system. I was stationed at Kaslik at the Officer's Club."

Part Question No. 3, of the respondent's asylum application asks the question have you or any member of your family ever been mistreated or threatened by the authorities in your home country or any other country, or by a group or groups that are controlled by the government or that the government of the country is unable or unwilling to control. Yes is checked off. Membership in a particular social is checked off and political opinion with the following typed therein: "On March 18, 2000 I was abducted at the Madfoun Syrian Check Point in Batroun, Lebanon by the Syrian Intelligence and taken to an unknown location by members of the Syrian Intelligence. When I arrived at the check point I was ordered to pull my car aside and my car was searched. During the car search they discovered that I was carrying fliers calling for the withdrawal of the Syrian forces from Lebanon. Upon this discovery, one of them hit me in the chest with a rifle and he accused me of being a traitor. My head was covered and I was then thrown in a vehicle and taken to an unknown location which I assumed was in Tripoli where I remained for approximately one day. During my detention, I was isolated, severely beaten, and shocked with electricity. I was accused of being a traitor and an Israeli collaborator. I was told that I was like a poisonous snake, that my head had to be cut off which is the only way to kill a poisonous snake. When I denied knowing anything and said that I did not know where the fliers came from, I was taken into their torture room where I was beaten and shocked with electricity. After the electric shock I was unable to bear anymore torture and I admitted that I had fliers in my possession. I pleaded to be released and kissed the hands and feet of the one who shocked me into submission. However, I told them that I had found the fliers in the area of the Orthodox Church in Achrafiyeh where my

fiance lives. I denied that I knew who the source was. I explained that I prayed there every first Sunday of the month and I found them in the street. They accused me of distributing them and I denied so. They said that they had witnesses against me. In order to obtain my release I promised them that I would take them with me the next time and show them where they could be found. I promised that I would meet them at their Intelligence Center in Amioun where I went the first Sunday of the month and one of them would go with me to the church as my guest. I would then assist him in finding where the fliers came from. I was warned that if I failed to do so I would be deemed the source of the fliers and then sent directly to Mazzeh Prison in Syria. I was then returned to the Madfoun Check Point and warned that I would be picked up at any moment and anywhere. I refused to assist them and I fled Lebanon."

Part C, Question No. 4, of the respondent's asylum application asks the question have you or any member of your family ever been accused, charged, arrested, detained, interrogated, convicted, sentenced, or imprisoned in your country or any other country, including the United States. Yes is checked off with the following typed therein: "I was abducted and detained on March 18, 2000 and was accused of being a traitor and an Israeli agent. No formal charges were lodged against me. I was detained for about one day by the Syrian Intelligence who control Lebanon. I was released because I agreed to lead them to the source of the fliers that I was distributing that called for an end of the Syrian occupation in Lebanon."

Part C, Question No. 5, of the respondent's asylum application asks the question do you fear being subjected to torture, et cetera, in your home country or any other

country if you return. Yes is checked off with the following typed therein: "I was previously tortured by the Syrian Intelligence and I was threatened that if I refused to cooperate with them, as I had to get my freedom, I would be sent to Mazzeh Prison where I would be tortured until my death. The prison in Syria is known for indefinite torture and indefinite detention of detainees without any formal charges or a trial."

Part C, Question No 6, of the respondent's asylum application asks the question what do you think would happen to you if you returned to the country from which you claim you would be subjected to persecution with the following typed there: "upon my return to Lebanon I would be immediately detained in the airport by the Syrian Intelligence stationed there and I would be taken to Mazzeh Prison in Syria. I was previously threatened that if I did not lead them to the source of the fliers I was charged with distributing I would be considered the source of the fliers and would be immediately sent to Mazzeh Prison. I refused to cooperate with them in their occupation of my country and I had to flee Lebanon."

Part C, Question No. 7, of the respondent's asylum application states describe in detail your trip to the United States from your home country, et cetera. Yes is checked off with the following typed therein: "I flew from Beirut, Lebanon to Milan, Italy on March 27, 2000. I remained there for approximately 15 minutes as a transit visitors [sic]. When I arrived I indicated to a uniformed officer that I only speak Arabic and I am Lebanese and requested an interpreter in order to seek asylum. My passport and papers were confiscated from me and I was directed and escorted to an airplane that arrived in Miami. I immediately requested an Arabic interpreter and, through an

interpreter, I requested asylum. I am not entitled to return to Italy for residence purposes."

The respondent's asylum application is dated 9/13/2000 with the respondent's signature and he was sworn to the contents of it on 9/14/2000 with the signature of the respondent.

Exhibit No. 3 in the record contains the *Country Reports on Human Rights Practices* from the Department of State for Lebanon, dated February 25, 2000, for the year 1999. A review of that document does not refer to the respondent nor any members of his family. A review of that document does indicate that Syrian troops, approximately 25,000, are stationed in Lebanon along with other forces, namely from Israel, and Israel supported militiamen in the south, army regulars, and armed Palestinian factions in camps who are subject to restrictions of their movements.

Exhibit No. 4 in the record contains articles concerning Lebanon for the years 1998, 1999, and 2000. A review of those documents does not refer to the respondent nor any members of his family in Lebanon, but do speak about the occupation in Lebanon of Syrian forces.

Exhibit No. 5 in the record contains the *Country Reports on Human Rights Practices* from the Department of State for Lebanon dated February of 2001. A review of that document does not refer to the respondent nor any members of his family in Lebanon, but does speak about the Syrian influence in Lebanon and that there are Syrian troops in Lebanon.

Exhibit No. 6 in the record is the *Country Reports on Human Rights Practices* from the Department of State for

Lebanon dated March 4, 2000. A review of that document does not refer to the respondent nor any members of his family in Lebanon, but does indicate that Syrian forces are still in Lebanon.

Exhibit No. 7 in the record is a credible fear interview in the name of the respondent dated April 11, 2000. A review of the documentation therein (Exhibit No. 7) indicates that the respondent told the interviewing officer that he is a 24-year-old, unmarried, male, native and citizen of Lebanon, who attempted to enter the United States as an immigrant without a valid immigrant visa at Miami International Airport on March 27, 2000 and that he fears if he returns to Lebanon he will be killed by Syrians on account of his political opinion. The credible interview further reflects that the respondent testified that he lived in El-Bayader area, Amioun, Lebanon with his mother, father, two brothers, and one sister. The interview indicates that the respondent stated that he was arrested by Syrians on March 18, 2000 and accused of passing out anti-Syrian pamphlets and collaborating with the enemy, and that he was detained for one day, and stated that the Syrians hit him with their hands, struck in the stomach and chest with the butt of a rifle, and was given electric shocks. The interview notes indicate that the respondent was released when he pledged to cooperate with the Syrians and act as their agent, and that he continued to be harassed by the Syrians, and, fearing that he would be arrested again and harmed, he fled his country.

The interview record in Exhibit No. 7 has interview notes reflecting that the respondent indicated that his full, true, and correct name is George Jalil Abi Saleh, who was born on 7/1/1975; that he is 24 years old and he was born

in Amioun, Lebanon; that that [sic] he was in Italy for about one quarter of an hour; and that he had lived, before coming to the United States, in El-Bayader Amioun, Lebanon; that he has a mother, father, two younger brothers, and one sister; that his sister is married and she moved away somewhere else in Lebanon; that he arrived in the United States on March 27, 2000 which was his first trip to the United States; that he has a cousin residing in New Jersey who is a United States citizen; that he is single; that he has no children; that he completed vocational high school; that he was last in school in 1995; that he worked as a bartender and chief captain of waiters in a restaurant and that the restaurant was part of the hotel called the Regency Palace; that his father worked and he had an upholstery shop which he owned and his mother worked in the house; that he was never a member of any political organization or social group; that he was never a member of a union where he worked; that he was never a member of any group at school; that none of his family was ever a member of any group; that he was never of any religious group or organization and that he is a Christian; that he was never politically active or involved in politics in any way; that he distributed pamphlets that had writings that indicated that Lebanon is for Lebanese citizens only; that he did that because it is an exhibition for freedom and opposition to the occupation by Syrians and their dictatorship; that he served in the military, which he joined in 1995 until 1996, which was compulsory service; that he did not receive any training while in the military; that they trained him in the third month and he was trained to shoot an M-16; that he was taught to once to use a machine gun; that he was assigned in the military as an operator of the telephone system; that he was assigned in Kaslik for one year; that he answered telephones from

one line to another; that he was never involved in combat; that he was never involving in fighting or crowd control; that no one in his family were in the military or police; that he was arrested by Syrians on March 18, 2000 and they accused him of passing out pamphlets that were against the Syrians, and they accused him of being a collaborator with the enemy; that he was detained for one day and they hit him with their hands and struck him in the stomach and chest with the butt of a rifle, and that he was given electric shocks when they asked him about the pamphlets which he distributed and that they got some of the pamphlets when they arrested him; that he was charged with the crime of distributing the pamphlets and that he was working against the government; and that he was released after he pledged to cooperate with them and he pledged to work with them and act as their agent, and they gave him an ID card; that he was not arrested again; that he had problems before like searches at check points and that they would ask him for his ID and asked for money; that one day he was moving from one place to another and he was stopped at a check point and they asked him for his ID, and they shouted at him asking for the ID, and he was not arrested and told them that he would get the ID card that Friday since he had to work; that he had other problems with the Syrians. They would harass him and accuse him of working against them and that if he goes back to Lebanon he would be killed by the Syrians because the Syrians accused him of working against them and stated that he was traitor, and that he was arrested and beaten by the Syrians previously.

Exhibit No. 8 in the record is a record of sworn statement in the name of the respondent dated March 27, 2000 taken at the Miami International Airport in Miami,

Florida with an Arabic interpreter wherein the respondent stated that his full, true, and correct name is George Jalil Abi Saleh, a citizen of Lebanon, born July 1, 1975 in Amioun, Lebanon, and he resides at El-Bayader Amioun, Lebanon; that his parents are both natives and citizens of Lebanon. The record of sworn statement indicates that the respondent is coming to the United States because the Syrians in Lebanon are causing a lot of problems; that he had $2,170 in his possession; that he worked in a hotel in Adma at the Regency Palace as a bartender and a captain in the restaurant; that he did not present any documents when he arrived at the inspection booth in Miami; that he was going to Peru and told the airline that he did not want to go to Peru; that he has a Lebanese passport in his true name; that he has never been arrested before at any time or any place; that he left Lebanon on the 27th, yesterday; that before coming to the United States today he was in transit from Milan, Italy; that he did not request asylum in Italy; that he is not married; that he had applied for a U.S. visa at an American Embassy which was denied. The sworn statement indicates that the respondent left Lebanon because of the Syrians and he is coming to seek political asylum.

Exhibit No. 9 in the record are pages of the respondent's Lebanese passport in his name showing his birth as indicated in the asylum application. The respondent's passport has a visa from Peru dated March 24, 2000 from Beirut, Lebanon. The respondent's passport has a stamp showing that he departed Lebanon on March 27, 2000.

Exhibit No. 10 in the record is a document with an English translation dated 3/19/2000 which states, in pertinent part, "medical report: upon examination of Mr. George Abi Saleh it has appeared to me that he suffers of

several contusions in the face, back, and legs. For this he needs rest with treatment for ten days as from this date."

In the removal hearing held before the undersigned and being questioned by his attorney, the respondent testified in these proceedings that he is a Lebanese Christian and that everything in his asylum application is correct; that he applied for political asylum because he was running away from the Syrians in Lebanon; that he first was encountered by the Syrians on March 18, 2000; that he was on his way home from work on March 18, 2000 and he encountered the Syrians; that he encountered the Syrian Secret Service at a road block; that he was taken out of his car and the Syrians found fliers; that the fliers said Lebanon is for Lebanese; that they beat him and he was taken to their headquarters; that he had 70 to 80 fliers and he distributed other fliers; that he was hit by the butt of a machine gun and he received electric shocks; that he was taken to Tripoli; that he was detained approximately one day; that he was released the second day; that, after being beaten and tortured, he decided to cooperate with them; that he promised to cooperate with the Syrians; that he would single out people to them concerning the fliers; that he told the Syrians he got the fliers from a church; that he promised the Syrians he would fulfill his promise at the end of the month; that he did not fulfill his promise to the Syrians; that he thereafter went to Beirut; that he suffered injuries while detained by the Syrians; that he had injuries from the beating and the torture; that he was examined by a doctor for the injuries; that he left Lebanon on 3/27/2000; that he got a visa to go to Peru; that he got the visa to go to Peru two or three days before the Syrians beat him; that his parents told him after he came to the U.S. that the Syrians came to his house

inquiring about him; that he would be killed by the Syrians if he returned to Lebanon; that before Lebanon he got a visa to go to Peru; that his father got the visa two or three days before his leaving Lebanon; that he had no intention to go to Peru; that he did not intend to come to the U.S. and live here; that he went to Italy; that he never requested asylum in Italy; that he was in Italy 15 minutes; that he was working as a bartender in 2000.

The respondent further testified, upon being questioned by the Government's attorney, that he got a visa two or three days before encountering the Syrians; that he worked as a bartender in March of 2000 in Lebanon; that he got fliers from work; that he lied to the Syrians about the fliers; that he testified what he told the Syrians previously was true; that he got the fliers at work; that the incident with the Syrians was not reported to the police and that he did not report the incident with the Syrians to the Lebanese authorities; that he went home to his house after he was released by the Syrians; on March 19th he returned home; that he lived with his family; that he stayed home after March 19th four days; that he was released on Sunday; that he was supposed to take the Syrians to church the following Sunday after being released; that he never got an identity card from the Syrians; that from Sunday to Wednesday they would check on his home; that nothing happened to him from Sunday to Wednesday before going to Beirut; that he was stopped going to Beirut by the Syrian Secret Service; that he was in Beirut from Wednesday to Sunday; that he stayed in his uncle's house in Beirut; that nothing happened to him while he was at his uncle's house in Beirut; that he traveled to Beirut alone; that his parents stayed in the home; that the visa to go to Beirut was issued on March 24, 2000;

that his father got him that visa and he returned to the home of his parents thereafter; that he and his father were in Beirut when his father got a visa for him to go to Peru; that he got a passport from Lebanon in 1999; that he had another passport before 1999; that he has no medical records concerning his encounter with the Syrians concerning the beatings and electric shock; that his medical records show that he was treated on March 19, 2000; and that he was arrested on the 18th, and the following day he was treated, the same day he was released from a doctor; that he applied for a visa to come to the U.S. in 2000, but he does not remember when that visa was denied.

The burden is on the respondent in these proceedings to establish that if he were to return to Lebanon that he would be persecuted or has a well-founded fear of persecution for any of the following: race, religion, nationality, membership in a particular social group, or a political opinion. The respondent bears the burden of showing that if he were to return to Lebanon that he will be persecuted or has a well-founded fear of persecution for any of those aforementioned reasons based on the standard of a reasonable person similarly situated as the respondent. Based on the foregoing and what is contained in the record in these proceedings, I find that the respondent has not established that a reasonable person similarly situated as the respondent would fear persecution or have a well-founded fear of persecution if returned to Lebanon for any of the aforementioned reasons, nor for what is stated in his asylum application, documentation in support thereof, and in his testimony in these proceedings.

The respondent's testimony in these proceedings concerning his fear of returning to Lebanon is not credible. The respondent previously testified that he got the fliers

at church and then he said he got the fliers at work. The respondent has contradicted himself in these proceedings, saying something in the proceedings and stating contrary. His record of sworn statement indicates the respondent was never arrested anywhere at any time. Yet, he has testified in the proceedings to corroborate his testimony in his in his asylum application that he was taken into custody by the Syrians. A reasonable person similarly situated as the respondent, based on this record, I find will not fear persecution nor have a well-founded fear of persecution for any of those aforementioned reasons.

Assuming what the respondent says is true, that he was encountered by the Syrians and they did what he claims they did, the respondent has not shown that he cannot live in any other part of Lebanon. The respondent testified that he lived in Beirut with his uncle and nothing happened to him in Beirut. A reasonable person similarly situated, assuming what he says is true, could always go back to Lebanon and live with his uncle in Beirut.

The respondent's medical record in Exhibit No. 10 I find to be suspect. The medical record does not indicate how the respondent got the contusions on his face; back, and legs. Nor does it reflect that the respondent was injured pursuant to electric shocks as the respondent has testified in these proceedings.

Based on the foregoing and what is contained in the record, I find that the respondent has not established, to my satisfaction, that a reasonable person similarly situated as he is would be persecuted or has a well-founded fear of persecution for any one of those aforementioned reasons previously aforementioned in this decision. Based

on the foregoing and what is contained in the record, I find that the respondent has not met his burden of showing that he merits political asylum and his application for that relief will be denied as a matter of discretion.

The respondent applied for withholding of removal. The Attorney General of the United States is required to withhold the respondent's removal to Lebanon if the respondent can show that his life or freedom will be threatened if removed to Lebanon for any of those aforementioned reasons heretofore stated. The respondent bears the burden of showing that if he were to be removed to Lebanon that his life or freedom will be threatened for any of those aforementioned reasons and that the respondent bears the burden of showing that it is more likely than not that if he were to be removed to Lebanon that his life or freedom will be threatened. Since I have concluded that the respondent has not met the lessor burden of showing he merits political asylum, it follows that he has not met the higher burden of showing he merits withholding of removal. Based on the foregoing and what is contained in the record, I find that the respondent has not met his burden of showing that if he were to be removed to Lebanon that his life or freedom will be threatened for any of those aforementioned reasons stated heretofore. Consequently, his application for withholding of removal will be denied.

The respondent applied for the Convention against Torture. Article 3 of the U.N. Protocol of 1967, which the United States of America is an signatory to, requires that the respondent not be removed to Lebanon if the respondent can show that he will be tortured at the hands of the Lebanese government or any agents of the Lebanese government at their instigation or acquiescence. Since I

have concluded that the respondent's testimony is not credible concerning why he left Lebanon and why he is afraid to go back to there, specifically his being beaten and given electric shocks by Syrian Secret Service as the respondent has testified, it follows that the respondent has not met his burden of showing that he will be tortured if he were to be removed or returned to Lebanon at the hands of the Lebanese government or any agents of the Lebanese government with their acquiescence or instigation. There is no evidence in the record in these proceedings to establish that the Syrian authorities are agents of the Lebanese government or that they are acting with the acquiescence or instigation of the Lebanese government in Lebanon. Assuming what the respondent stated concerning his being beaten and given electric shocks by the Syrian authorities, there is no evidence that the Syrian authorities have acted or act with the acquiescence or instigation of the Lebanese government in Lebanon. Consequently, based on the foregoing and what is contained in the record, I find that the respondent has not shown that he has been tortured in the past in Lebanon at the hands of the Lebanese government or any agents of the Lebanese government at their instigation or acquiescence. Nor has the respondent established that, if he were to be removed or returned to Lebanon, that he will be subjected to torture at the hands of the Lebanese government or any agents of the Lebanese government at their acquiescence of instigation. Consequently, his application for the Convention against Torture will be denied.

The respondent is an arriving alien. An arriving alien is statutorily ineligible to be granted voluntary departure.

The respondent declined to designate a country to which his removal be directed if required. The respondent's removal will be directed to Lebanon, the country of the respondent's nativity and citizenship.

ORDER

IT IS ORDERED that the respondent's application for political asylum be and the same is hereby denied.

IT IS FURTHER ORDERED that the respondent's application for withholding of removal be and the same is hereby denied.

IT IS FURTHER ORDERED that the respondent's application for the Convention against Torture be and the same is hereby denied.

IT IS FURTHER ORDERED that the respondent be removed from the United States of America to Lebanon on the charge contained in the Notice to Appear.

THOMAS M. RAGNO
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE THOMAS M. RAGNO, in the matter of:

GEORGE JALIL ABI SALEH
A 77 924 790
Boston, Massachusetts

is an accurate, verbatim transcript of the cassette tape as provided by the Executive Office for Immigration Review

and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

/s/ Janet Woodward Carnahan /ST
Janet Woodward Carnahan, Transcriber

Free State Reporting, Inc.
1324 Cape St. Claire Road
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July 7, 2003
(completion date)

By submission of this CERTIFICATE PAGE, the Contractor certifies that a Sony BEC/T-147, 4-channel transcriber or equivalent, as described in Section C, paragraph C.3.3.2 of the contract, was used to transcribe the Record of Proceeding shown in the above paragraph.